

The Hotel Operators' Occupation Tax Act imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel. See 86 Ill. Adm. Code 480.101. (This is a GIL).

March 17, 2000

Dear Xxxxx:

This letter is in response to your letter received by this office on March 1, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 21Il. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

AAA owns hotels in Illinois. I am writing this letter to you to update my records regarding the collection and payment of taxes for the hotels. I am interested in making sure that our hotels are collecting the proper amount of taxes on all taxable items and in turn paying the proper amount to the state.

I have enclosed a copy of our revenue list for review by a taxpayer service agent. My questions to you are:

- ◆ What items on the enclosed revenue list are taxable?
- ◆ What is the percentage of sales and occupancy tax we are to pay on each revenue item?

Any information that the Department of Revenue can offer will be appreciated. The information furnished to me will enable my company to collect and pay the proper taxes warranted by the State of Illinois. Once again thank you for your assistance in this matter. If for any reason I need to be contacted please feel free to contact me.

We are unable to respond in the manner you requested. You have not included enough information regarding the items on the list you provided for the Department to individually rule on each item. Such inquiries need to be made in the form of a Private Letter Ruling.

The Hotel Operators' Occupation Tax Act imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel. See the enclosed copy of 86 Ill. Adm. Code 480.101. The Hotel Operators' Occupation Tax applies to gross receipts received from a person who occupies a room or becomes irrevocably liable to pay rent for the right to occupy a specific room or rooms. See Section 480.101 (c)(1). Therefore, when a person becomes liable for paying a charge to rent a room, those gross receipts are subject to tax whether or not the person shows up to occupy the room.

The Hotel Operators' Occupation Tax is imposed on receipts from renting rooms for living quarters or for sleeping or housekeeping accommodations and does not apply to receipts from the renting of rooms for other purposes, such as for use as display rooms or sample rooms, as meeting rooms, as offices or as private dining rooms. See Section 480.101(b)(1). Therefore, charges for the rental of a banquet facility are not subject to the Hotel Operators' Occupation Tax.

Please note that the Hotel Operators' Occupation Tax is a tax imposed upon hotel operators and not hotel guests. The Hotel Operators' Occupation Tax Act allows hotel operators to collect an amount from their customers that represents reimbursement for the hotel operators' tax liability. As a result, there is no tax that is imposed upon guests from which they can be exempted. The fact that these guests hold exemption identification numbers issued by the Department does not exempt them from reimbursement.

The only exemptions available to hotel operators are for rentals to permanent residents and to certain diplomatic personnel. A permanent resident is considered a person who occupies or has the right to occupy a room for at least 30 consecutive days. See Section 480.101(a)(1). The exemption for rentals to certain diplomatic personnel applies only to diplomatic personnel possessing certain types of diplomatic tax exemption cards issued by the U.S. Department of State, Office of Foreign Missions. See the enclosed copy of 86 Ill. Adm. Code 130.Illustration A.

In general, the receipts charged by hotels as a result of their provision of in-room movies are subject to the Hotel Operators' Occupation Tax. It is the Department's position that in-room movies provided by hotel operators constitute "services" or "accommodations accompanying the use and possession of the room" that are subject to tax. However, the Department is aware that there may exist situations in which third-party video companies, as opposed to the hotel operators, provide in-room movies directly to hotel guests. An examination of all the facts and circumstances would have to be done in order for the Department to determine whether this is the case in any particular situation. In situations where the Department finds that third party video companies, rather than the hotel operators, are actually providing the in-room movies directly to the hotel guests, the Hotel Operators' Occupation Tax would not apply.

The Retailers' Occupation Tax imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (1998 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (1998 State Bar Edition). Sales of food by hotels, whether in restaurants, coffee shops, or catered functions are subject to Retailers' Occupation Tax. In addition, the purchaser of the food incurs a corresponding Use Tax liability. Sales of items through vending machines or gift shops of hotels are also subject to Retailers' Occupation Tax and Use Tax. When individual members of exclusively charitable, religious or educational organizations, or individual employees of governments or their agencies, purchase meals or other tangible personal property from hotels, the hotels incur Retailers' Occupation Tax liabilities. However, if governments, churches, schools, or charities possess valid tax exemption identification numbers issued by the Department and the organization itself directly purchases meals in the performance of some organizational function, such purchases could be made tax free upon presentation of the Department-issued exemption numbers.

Please find enclosed a copy of 86 Ill. Adm. Code 130.2070 concerning Sales of Containers, Wrapping and Packing Materials and Related Products. As you can see from the regulation, nonreusable tangible personal property sold to food and beverage vendors, including persons engaged in the business of operating restaurants, cafeterias or drive-ins, is a sale for resale when it is transferred to customers in the ordinary course of business as part of the sale of food or beverages

and is used to deliver, package, or consume food or beverages, regardless of where consumption of the food or beverage occurs. See Section 130.2070(b)(3). Examples of such items include, but are not limited to, paper and plastic cups, plates, baskets, boxes, sleeves, buckets or other containers, utensils, straws, placemats, napkins, doggie bags and wrapping or packaging materials that cannot be reused by the food or beverage vendor and which are transferred to customers as part of the sale of food or beverages. Such items do not include items that are used by the food vendor in conducting his business and that are not transferred to the customer, including but not limited to, paper products, serving trays, serving dishes, utensils or condiment bottles.

With regard to complimentary food and beverages, persons who give merchandise away to others are considered to be the end users of such items being given away. As such, donors owe Use Tax on the donor's cost price of the tangible personal property that is transferred. In addition, sales of items, such as towels, drinking cups, and soap, to businesses, such as hotels and office buildings, for use in the businesses are sales subject to Retailers' Occupation Tax and Use Tax. See *Theo. B. Robertson Products Co. v. Nudelman*, 389 Ill. 281 (1945).

When persons or businesses purchase tangible personal property from vendors that they will resell to purchasers, they may purchase such items tax-free by providing their vendors with properly executed Certificates of Resale. Certificates of Resale are valid if they contain the information set forth in 86 Ill. Adm. Code 130.1405. If such persons or businesses fail to provide Certificates of Resale, the sales are presumed to not be for resale and sellers would incur Retailers' Occupation Tax and be required to collect the corresponding Use Tax from purchasers. Please note, however, that consumable supplies used by hotels are subject to Use Tax.

Generally, proceeds from mandatory service charges separately stated on customers' bills for the purchase and consumption of food and beverages are not subject to tax, to the extent that the proceeds are in fact turned over as tips or as a substitute for tips to the employees who participate directly in preparing, serving, hosting or cleaning up the food or beverage function with respect to which the service charge is imposed are not subject to tax. 35 ILCS 120/2-5(15).

With regard to laundry and dry cleaning services, under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident to sales of service. Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of

service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered under Section 2a of the Retailers' Occupation Tax Act because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

Hotel operators may be considered telecommunications retailers if they sell telecommunications to their guests. The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495, enclosed.

Pursuant to Section 495.100(a), "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of material used, labor or service cost or any other expense whatsoever.

Effective January 1, 1998, the Telecommunications Municipal Infrastructure Maintenance Fee Act (Act) (35 ILCS 635/1 et seq.) provides for the imposition of various fees upon telecommunications retailers.

Section 15 of the Act imposes a State infrastructure maintenance fee upon telecommunications retailers, as that term is defined in 35 ILCS 635/10, "equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State." (35 ILCS 635/15(b).) Section 15 also provides for an optional infrastructure maintenance fee which telecommunications retailers may pay "with respect to the gross charges charged by the

telecommunications retailer to service addresses in a particular municipality for telecommunications, other than wireless telecommunications, originating or received in the municipality " (35 ILCS 635/15(c).) These fees are collected, enforced and administered by the Illinois Department of Revenue. (35 ILCS 635/25(b))

Section 20 of the Act provides that municipalities may impose a municipal infrastructure maintenance fee upon telecommunications retailers. This fee is based upon gross charges charged by the telecommunications retailers to service addresses in the municipality for telecommunications originating or received in the municipality. This fee is collected, enforced, and administered by the municipality imposing the fee. (35 ILCS 635/25(c).)

Illinois municipalities are also authorized to impose a municipal telecommunications tax. (See 65 ILCS 5/8-11-17.) The tax is imposed on the act or privilege of originating in such municipality or receiving in such municipality intrastate or interstate telecommunications by a person at a rate not to exceed 5% of the gross charges for such telecommunications purchased at retail by such person. (See 65 ILCS 5/8-11-17(a)(1) and 65 ILCS 5/8-11-17(a)(2).) This tax may only be imposed if the municipality does not have in effect an occupation tax imposed on persons engaged in the business of transmitting messages by means of electricity as authorized by Section 8-11-2 (65 ILCS 5/8-11-2) of the Illinois Municipal Code. The municipality imposing the tax provides for its administration and enforcement, not the Illinois Department of Revenue. Therefore, questions regarding this tax should be addressed to the individual municipalities imposing it. There is no equivalent statute for county governments.

In addition, the Emergency Telephone System Act provides that "[t]he corporate authorities of any municipality or any county may, subject to the limitations of subsections (c), (d), and (h), and in addition to any tax levied pursuant to Section 8-11-2 of the Illinois Municipal Code, impose a monthly surcharge on billed subscribers of network connection provided by telecommunication carriers engaged in the business of transmitting messages by means of electricity originating within the corporate limits of the municipality or county imposing the surcharge at a rate per network connection determined in accordance with subsection (c)." (See 50 ILCS 750/15.3(a) and (c).) "The surcharge authorized by this Section shall be collected from the subscriber by the telecommunications carrier providing the subscriber the network connection as a separately stated item on the subscriber's bill." (50 ILCS 750/15.3(f).) This surcharge is paid to the municipality, county or Joint Emergency Telephone System Board. (See 50 ILCS 750/15.3(g).) Questions regarding the surcharge should be addressed to the municipality or county imposing it.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.